

Calvert Papers. viz. the barr assigned the following points to be Argued in Law

1st That the Comission of Oyer & Terminer doth give full power & Authority to hear & determine all treasons felonies &c. within & without the bounds of Virginia but that all such tryals & determinacōns shall be *Secundum Legem & consuetudinem Angliæ* & therefore he ought (& by the Laws of this Colony itselfe) to have been tried by a Venire of the Vicinage where the fact was Comitted viz. of Calvert County in Maryland w^{ch} he was not therefore the tryall vicious & the same was reinforced by his Councill.

The Court overruled the foregoing point for that the words of his Maj^{ts} Comission of Oyer & Terminer are per *Sacramentum proborum & Legalium hominum De Colonia nostra Virginia.*

2^{dly} That in all Indictments certainty is required that the prisoner at the barr may not Suffer prejudice for want of certainty whereto he may plead & that in the Indictm^t whereby he was Arraigned there was noe Specification of the river Creek Towne parish or Hund^d nor of the County nor province & therefore the Comission of Oyer & Terminer hath not been well pursued in that respect.

To which the Court made answer th^t the Indictm^t was as certaine as possible viz. that the fact was Comitted on board his Maj^{ts} Ketch the Quaker in the great Cabbin thereof rideing within the Capes of Virginia.

3^{dly} The prisoner insisted that the first pannell of the Jurors for his tryall did not amount to the numb^r of four & twenty persons whereas by the English Laws & Customs that number is requisite to make a Legall pannell.

To which it was replied by the Court that the pannell is only the Jury sworne & that an Array sometimes consists of twenty four sometimes of thirty six that thêreby the prisoner may have liberty to make his Exceptions against the full number allowed by Law if he pleases & that seeing noe person was admitted & sworne on the Jury of life & Death against whom the prisoner Coll. Geo. Talbot Excepted & that the Jurors were called over untill the number of twelve was by his free choice admitted to be his Jury the Court therefore resolved the pannell to have been Lawfull seeing there was more persons Impannelled if the prisoner had made more Exceptions.

4^{thly} The prisoner then moved that the Fundamentall Laws & Customs of England do require that the Indictm^t shall be found in the proper County where the fact is Comitted before any tryall can be had thereon & that noe presentm^t had been made of this fact by any Coroners Inquest nor Grand Jury of the County nor Province where the s^d offence was Comitted.